IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16210 of 2007

Date of decision 16 .10 .2007

M/s Kiran Overseas Exports Ltd. .. Petitioner

Versus

Industrial Development Bank of India and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Anand Chhibbar, Advocate for the petitioner

M.M.Kumar, J.

The petitioner-company has approached this Court under Article 226 of the Constitution with a prayer for quashing sale notice dated 17.9.2007 (Annexure P.10) published in the Hindi Daily, Dainik Bhaskar for sale of the property of the petitioner-company. The sale is fixed for 17.10.2007. The principal ground for quashing of the sale notice is that a one time settlement has already been arrived at between the petitioner company and all the secured lenders. It has further been prayed that a direction be issued to the Industrial Development Bank of India (for brevity 'the IDBI')- respondent no.1 restraining them from going ahead with the sale of the property of the company in view of one time settlement dated 6.10.2007 (Annexure P.12) which is alleged to have been arrived at between the parties in the joint meeting of the secured creditors held on 6.10.2007.

The petitioner company availed certain financial assistance from various financial institutions to run its business. It could not start

its commercial production and it approached the Board of Industrial and Financial Reconstruction (BIFR) for declaring the company as sick industrial company under the Sick Industrial Companies (Special Provisions) Act, 1985 (for brevity 'the SICA Act'). The BIFR registered a case at number 40 of 1999 on 26.2.1999 and appointed IDBI-respondent no.1 as Operating Agency. However, the petitioner company could not be rehabilitated and vide order dated 26.9.2001 BIFR held that the company be wound up under the provisions of Section 20(1) of the SICA Act. The appeal filed by the petitioner -company before the Appellate Authority of Industrial and Financial Reconstruction, New Delhi (for brevity 'the AAIFR') against the order dated 26.9.2001 passed by the BIFR was dismissed on 26.11.2001. The petitioner thereafter filed a writ petition before the Hon'ble Madras High Court which is stated to be pending. It is alleged that negotiation for one time settlement between various secured creditors were going on but respondent no. 1 IDBI issued notice under Section 13(2) of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act,2002 (for brevity the Securitization Act') calling upon the petitioner company to pay the entire outstanding due amount of more than Rs. 17 crores (Annexure P.4). On 15.11.2006 the petitioner company is stated to have replied the afore-mentioned notice with the request for one time settlement in pursuance to Reserve Bank of India guide-lines. It was also requested that IDBI respondent no.1 may not proceed with the notice and withdraw the same (Annexure P.5). The request made by the petitioner- company was rejected by respondent no.1 on 30.12.2006

(Annexure P.6). However, the Standard Chartered Bank- respondent no.2 is stated to have shown its willingness to take over the debts of all secured creditors with a further provision of additional funds toward working capital to revive the operations of the petitioner company subject to approval by the competent authority (Annexure P.7). The IDBI -respondent no.1 intimated to the petitioner-company vide letter dated 31.7.2007 (Annexure P.8) regarding taking over possession of the assets of the company at village Rasoi (Sonepat) vide possession notice dated 27.7.2007 (Annexure P.9). On 17.9.2007, respondent no.1- IDBI issued sale notice in the Hindi Daily Dainik Bhaskar (Annexure P.10) for sale of the assets of the company by inviting bids/ tenders. The last date for submission of tender is 17.10.2007. It is alleged that on 3.10.2007, respondent no. 2- Standard Chartered Bank once again showed interest stating that it would be in a position to be assigned the secured debt of the petitioner company for the amount referred in the letter dated 19.5.2006 and the matter was to be taken up with the other secured creditors (annexure P.11). A joint meeting was held by the petitioner-company with respondent no. 1 IDBI including all other secured creditors to arrive at one time settlement . It was agreed in principal that Rs. 19 crores be paid to all the secured creditors by 12.10.2007 and if that happens the properties were not to be put to sale (Annexure P.12). On 11.10.2007, respondent no. 4 Punjab National Bank informed respondent no.1 IDBI that it was not feasible to convey its definite views towards the offer within the stipulated time because it requires approval from the competent authority which was under consideration (Annexure P.14). On 11.10.2007, the petitioner-company

requested IDBI- respondent no.1 that the proposed sale of the property concerning the company of the petitioner fixed for 17.10.2007 may kindly be put on hold as the views of the secured creditors on OTS were being processed. However, the request was rejected by demanding the amount of Rs. 19 crores as agreed towards the OTS by 12.10.2007 (Annexure P.15). On 12.10.2007, respondent no.2- Standard Chartered Bank again wrote to IDBI respondent no.1 that it was ready to pay the whole amount in one go to all the secured creditors but some time was required for approval of competent authority of all the secured creditors. It was further pointed out that respondent no.2 Standard Chartered Bank would pay Rs. 14.33 crores to all other secured creditors excluding their own claim for which they require No Objection Certificate from all the secured lenders and due diligence of the debts advanced by all the secured creditors. The offer was kept valid upto the closing business hours of 16.10.2007 (Annexure P.16). The prayer now made in the writ petition is that IDBI respondent no.1 has acted unfairly by rejecting the offer for extension of time for deposit of the OTS amount on 12.10.2007 and is illegally proceeding with the sale of the property of the petitioner company on 17.10.2007.

Mr. Anand Chhibbar, learned counsel for the petitioner has submitted that once respondent nos. 2 to 4 - Banks have shown their willingness to accept one time settlement and pay the amount of Rs. 19 crores then there was nothing sacrosanct in fixing the date as 17.10.2007 which could have been extended by respondent no.1 IDBI. He has submitted that the main object of Securitization Act or other statutes is to ensure the recovery of the dues of the secured creditors

and not to close the running business like the petitioner-company. Therefore, it has been prayed that respondent no.1 IDBI be restrained from proceeding with the auction for which tenders/ bids had been invited for 17.10.2007.

We have thoughtfully considered the submissions made by the learned counsel and regret our inability to accept the same. There is huge amount which is outstanding against the petitioner company as is evident from the perusal of registered notice dated 26.10.2006 sent by the Deputy General Manager, Recovery Department of respondent No.1- IDBI. It is imaginary to say that one time settlement for payment of Rupees 19 crores has been reached. It appears that only some understanding in pursuance to meeting held on 6.10.2007 was reached which is yet to be ratified by their superior officers. In any case the amount of Rs. 19 crores was required to be deposited with IDBI – respondent no.1 on or before 12.10.2007 which has not been deposited. The efforts of the BIFR to rehabilitate the petitioner- company have also failed. There is neither any provision under the Securitization Act or under any other statute nor any such provision has been cited before us which may be used to rescue the petitioner-company from the self created situation. We are further of the view that any interference by this Court at this stage may result into disturbance of finance planning as there is substantial amount payable by the petitioner-company. Therefore, we are not inclined to intervene in the process of sale undertaken by respondent no.1 -IDBI for which the last date fixed is 17.10.2007 i.e. tomorrow. This 11th hour effort of the petitioner company is wholly futile and does not infact give any cause of action to

it to move this Court. There is thus no merit in the petition and accordingly the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

16.10.2007
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